

CHAPTER 4: RULES OF ORIGIN

Article 4.01 Definitions

For purposes of this Chapter, the following terms shall be understood as:

CIF: the value of an imported good that includes the costs of insurance and freight to the port or place of entry in the importing Party;

FOB: free on board; regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer;

fungible goods or materials: goods or materials which are interchangeable for commercial purposes and whose properties are essentially identical and it is not possible to differentiate one from another by a simple eye examination;

generally accepted accounting principles: recognized consensus or substantial authorized support given in the territory of one of the Parties with respect to the recording of revenues, expenses, costs, assets and liabilities, the disclosure of information and the preparation of financial statements. Generally accepted accounting principles may encompass broad guidelines for general application, as well as detailed standards, practices and procedures;

goods wholly obtained or produced entirely in the territory of one or more Parties:

- (a) minerals extracted or obtained in the territory of one or more Parties;
- (b) vegetables and vegetable products harvested, gathered or collected in the territory of one or more Parties;
- (c) live animals born and raised in the territory of one or more Parties;
- (d) goods obtained by hunting, trapping, fishing, aquaculture, gathering or capture in the territory of one or more Parties;
- (e) goods obtained from live animals in the territory of one or more Parties;
- (f) fish, shellfish, and other marine species obtained outside the territorial sea of a Party, by fishing vessels registered or recorded in a Party and fly its flag, or by fishing vessels rented by enterprises established in the territory of a Party;
- (g) goods obtained or produced on board factory vessels from the goods referred to in subparagraph (f) provided that such vessels are registered or recorded in a Party and fly its flag, or are rented by enterprises established in the territory of a Party;

- (h) goods obtained by a Party or a person of a Party from the seabed or subsoil beneath the sea bed outside the territorial sea provided that the Party has rights to exploit such seabed or subsoil;
- (i) scrap and waste derived from manufacturing or processing operations in the territory of one or more Parties, provided those goods are only fit for the recovery of raw materials; or
- (j) goods produced in the territory of one or more Parties, exclusively from goods mentioned in subparagraph (a) through (i) above;

indirect material: a good used in the production, testing or inspection of another good, but not physically incorporated into the good, or a good used in the maintenance of buildings or the operation of equipment related to the production of another good, including:

- (a) fuel, energy, solvents and catalysts;
- (b) equipment, devices and supplies used in the testing or inspection of goods;
- (c) gloves, glasses, footwear, clothing, and safety equipment and supplies;
- (d) tools, dies and molds;
- (e) spare parts and materials used in the maintenance of equipment and buildings;
- (f) lubricants, greases, compounding materials, and other materials used in production, or used to operate equipment and maintenance of buildings; and
- (g) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

material: a good used in the production of another good including ingredients, parts, components and goods that have been physically incorporated into another good or were subject to the production process of another good;

production: methods of obtaining goods including manufacturing, producing, growing, assembling, processing, harvesting, raising, breeding, mining, extracting, hunting, collecting, gathering, fishing, trapping and capturing; and

value: the value of a good or material for purposes of calculating customs duties or for purposes of applying this Chapter according to the rules established in the Customs Valuation Agreement.

Article 4.02 Application and Interpretation Instruments

1. For purposes of this Chapter:

- (a) the tariff classification of goods shall be based on the Harmonized System; and
- (b) the rules of the Customs Valuation Agreement shall be used to determine the value of a good or material.

2. For purposes of this Chapter, the Customs Valuation Agreement shall be applied to determine the origin of a good as follows:

- (a) the rules of the Customs Valuation Agreement shall be applied to domestic transactions, with the modifications required by the circumstances, as they should apply to international transactions; and
- (b) the provisions of this Chapter shall prevail over those of the Customs Valuation Agreement, where there are inconsistencies.

Article 4.03 Originating Goods

Except as otherwise provided in this Chapter, a good shall be considered as originating in the territory of a Party, when:

- (a) it is wholly obtained or produced entirely in the territory of one or more Parties;
- (b) it is produced entirely in the territory of one or more Parties exclusively from materials that qualify as originating according to this Chapter; or
- (c) it is produced in the territory of one or more Parties from non-originating materials that meet with a change in tariff classification, satisfies a regional value content or other requirements, as specified in Annex 4.03 and the good complies with all other applicable requirements of this Chapter.

Article 4.04 Minimal Processes or Operations

Except otherwise provided in this Chapter, the minimal processes or operations that by themselves or in combination do not confer origin to a good are the following:

- (a) the necessary operations for the preservation of a good during transportation or storage, including airing, ventilation, drying, refrigeration, freezing, elimination of damaged parts, application of oil, antirust painting or protective coatings, or the placing in salt, sulfur dioxide or some other aqueous solution;

- (b) simple operations consisting of cleaning, washing, sifting, straining, shaking, selection, classification or grading, culling, peeling, shelling or striping, grain removal, pitting, pressing or crushing, soaking, elimination of dust or of spoiled or damaged parts, sorting, division of consignments in bulk, grouping in packages, placing of marks, labels or distinctive signs on products and their packages, packing, unpacking or repackaging;
- (c) combination or mixing operations of goods that have not result in any important difference in the characteristics of the goods before and after the combination or mixing;
- (d) simple jointing or assembling of parts to produce a complete good, or to form sets or assortments of goods; and
- (e) simple water dilution operations or ionization and salting, which have not changed the nature of the good.

Article 4.05 Indirect Materials

Indirect materials shall be considered as originating, regardless where they are produced or manufactured, and the value of those materials shall be included in the costs as indicated in the accounting records of the producer of the good.

Article 4.06 Accumulation

1. Each Party shall provide that originating goods or materials of one or more of the Parties, incorporated into a good in the territory of another Party, shall be considered to originate in the territory of that other Party.
2. Each Party shall provide that a good is originating when the good is produced in the territory of one or more of the Parties by one or more producers, provided that the good satisfies the requirements established in Article 4.03 and all other applicable requirements in this Chapter.

Article 4.07 Regional Value Content

1. The regional value content of the goods shall be calculated according to the following formula:

$$\text{RVC} = \frac{(\text{TV} - \text{VNM})}{\text{TV}} * 100$$

where:

RVC is the regional value content, expressed as a percentage;

TV is the transaction value of the good adjusted to a FOB basis, except as otherwise provided in paragraph 2, determined according to Articles 1 through 8 and 15 of the Customs Valuation Agreement; and

VNM is the transaction value of the non-originating materials adjusted to a CIF basis, except as otherwise provided in paragraph 5, according to Articles 1 through 8 and 15 of the Customs Valuation Agreement.

2. When the good is not exported directly by its producer, the value shall be adjusted to the point at which the buyer receives the good in the territory in which the producer is located.

3. All the records of the costs considered for the calculation of the regional value content shall be recorded and maintained according to the generally accepted accounting principles applicable in the territory of the Party where the good is produced.

4. When the producer of a good acquires a non-originating material in the territory of a Party in which the producer is located, the value of the non-originating material shall not include freight, insurance, packing costs and any other cost incurred in the transportation of the material from the supplier's warehouse to the location of the producer.

5. For purposes of calculating the regional value content, the value of the non-originating materials used in the production of the good shall not include the value of the non-originating materials used by:

(a) another producer in the production of an originating material that is acquired and used by the producer of the good in the production of that good; or

(b) the producer of a good in the production of a material that is self produced.

Article 4.08 *De Minimis*

1. A good shall be considered originating if the value of all non-originating materials used in the production of that good that does not satisfy the requirement of change in tariff classification set out in Annex 4.03 does not exceed ten percent (10%) of the transaction value of the good, as determined according to Article 4.07.

2. When it refers to goods classified into chapters 50 through 63 of the Harmonized System, the percentage indicated in paragraph 1 shall refer to the weight of fibers or yarns with respect to the weight of the good being produced.

3. Paragraph 1 shall not apply to a non-originating material used in the production of goods classified into chapter 1 through 24 of the Harmonized System, unless the non-

originating material is classified in a different subheading than the good for which the origin is being determined according to this Article.

Article 4.09 Fungible Goods and Materials

1. When in the production of a good originating or non-originating fungible goods or materials are used, the origin of those fungible goods or materials shall be determined through the application of one of the following inventory management methods:

(a) first in first out (FIFO) method;

(b) last in first out (LIFO) method; or

(c) averaging method.

2. Once the inventory management method listed out in the preceding paragraph is selected by a producer, it shall be used during the entire period of a fiscal year of that producer.

Article 4.10 Sets or Assortments of Goods

1. A set or assortment of goods that is classified according to rule 3 of the General Rules of the Interpretation of the Harmonized System, as well as the goods whose description according to the nomenclature of the Harmonized System is specifically that of a set or assortment, shall qualify as originating, whenever each one of the goods contained in that set or assortment complies with the rules of origin set out in this Chapter and in Annex 4.03.

2. Notwithstanding paragraph 1, a set or assortment of goods shall be considered originating, if the value of all non-originating goods used in making the set or assortment does not exceed the percentage set out in paragraph 1 of Article 4.08 with respect to the value of the set or assortment, as determined according to Article 4.07.

3. The provisions of this Article shall prevail over the specific rules of origin set out in Annex 4.03.

Article 4.11 Accessories, Spare Parts and Tools

1. The accessories, spare parts or tools delivered with the good that usually form part of the good shall not be taken into account for determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.03, provided that:

(a) the accessories, spare parts or tools are not invoiced separately from the good; and

(b) the amount and the value of these accessories, spare parts or tools are customary for the good.

2. When the good is subject to a requirement of regional value content, the value of the accessories, spare parts or tools shall be considered as originating or non-originating materials, as the case may be, for calculating the regional value content of the good.

3. For those accessories, spare parts or tools that do not fulfill the conditions mentioned above, the corresponding specific rules of origin shall apply to each of them respectively and separately, according to this Chapter.

Article 4.12 Packaging Materials and Containers for Retail Sale

1. When packaging materials and containers in which a good is packaged for retail sales are classified in the Harmonized System with the good, they shall not be taken into account in determining whether all non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.03.

2. When the good is subject to a requirement of regional value content, the value of these packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.

Article 4.13 Packing Materials and Containers for Shipment

Containers and packing materials in which the good is packed for shipment shall not be taken into account in determining whether:

(a) the non-originating materials used in the production of the good undergo the applicable change in tariff classification set out in Annex 4.03; or

(b) the good satisfies the requirement of regional value content.

Article 4.14 Transit and Transshipment

An originating good shall not lose such status when it is exported from a Party to another Party and during its transportation it passes by the territory of one Party or by the territories of one or more non-Parties, as long as it fulfills the following requirements:

(a) the transit is justifiable by geographical reasons or by considerations relative to requirements of international transportation;

(b) the good has not been destined for trade, consumption, and use in the countries of transit;

- (c) during its transportation and temporary storage the good has not undergone operations other than unloading, reloading or any other operation necessary to preserve them in good condition; and
- (d) the good remains under the control of the customs authority in the territory of a Party or non-Party.

Article 4.15 Committee on Rules of Origin and Customs Procedures

1. For the purposes of the effective implementation and operation of this Chapter and Chapter 5 (Custom Procedures Related to the Origin of Goods), the Parties shall establish a Committee on Rules of Origin and Customs Procedures (hereinafter referred to in this Article as “the Committee”) pursuant to Article 14.05 (Committees).

2. The Committee shall meet when the Commission requires it or as the Parties may agree.

3. The Committee shall have, along with the function established in Article 14.05 (Committees), the following functions:

(a) review and make appropriate recommendations to the Commission on the implementation and operation of this Chapter and Chapter 5 (Custom Procedures Related to the Origin of Goods);

(b) review and make appropriate recommendations to the Commission on:

- (i) matters relating to determinations of origin;
- (ii) certificate of origin established in Article 5.02 (Origin Certification) and its filling instructions referred to in the Uniform Regulations;
- (iii) the certifying procedures established in Article 5.02 (Origin Certification) with a view to confirm whether it would be more beneficial to the Parties to let exporters or producers certify certificates of origin by themselves;
- (iv) the advance rulings established in Article 5.07 (Advanced Rulings); and
- (v) uniform regulations established in Article 5.11 (Uniform Regulations);

(c) modify the specific rules of origin contained in Annex 4.03;

(d) consider any other matter as the Parties may agree related to this Chapter and Chapter 5 (Custom Procedures Related to the Origin of Goods); and

(e) consider any other matter that the Commission may consider necessary.

4. The Parties shall consult and cooperate to ensure that this Chapter and Chapter 5 (Custom Procedures Related to the Origin of Goods) are applied in an effective and uniform manner, consistently with the spirit and the objectives of this Agreement.

5. A Party that considers that one or more of the provisions of this Chapter and its Annex or Chapter 5 (Custom Procedures Related to the Origin of Goods) requires modification in order to take into account developments in production processes, lack of supply of originating materials, or other relevant matters may submit a proposal of modification along with supporting rationale and any studies to the Commission for consideration.

6. Upon submission by a Party of a proposal of modification under paragraph 5 of this Article, the Commission shall refer the matter to Committee. The Committee shall meet to consider the proposal of modification within sixty (60) days of the date of referral or on such other date as the Commission may decide.

7. Within the period referred in paragraph 6, the Committee shall provide a report to the Commission, setting out its conclusions and recommendations, if any. Upon reception of the report, the Commission may take appropriate action under Article 14.01 (Administrative Commission of the Agreement).